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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,171	07/31/2000	Michael J. Matsko	8611	4793

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EXAMINER

SHAFFER, ERIC T

ART UNIT PAPER NUMBER

3623

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/629,171

Applicant(s)

MATSKO ET AL. *ST*

Examiner

Eric T. Shaffer

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

1. This communication is in response to the amendments filed February 9, 2004.

***Summary of Instant Office Action***

2. Applicant's arguments concerning claims 1 – 20 have been considered and deemed persuasive. The rejection is removed and replaced with a rejection based on new art.
3. None of the claims have been cancelled and no claims have been added. Claims 1, 7, 13, 16, 19 and 20 have been amended.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 – 3, 6 – 9, 12, 13, 16 and 19 - 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US 6,567,787).

As per claims 1, 13 and 19, Walker teaches a computer implemented method of associating a retail performance metric record with an event causing the retail performance metric, the retail performance metric record being a function of the retail performance metric type and the time elapsed waiting for and receiving an input, comprising the steps of:

receiving an input indicative of an event occurring at a point of sale during a transaction, wherein the event occurring at the POS is a scan operation ("the POS terminal then receives

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transaction data such as items ordered by a customer and the quantity of each item. Transaction data may be received by actuation of keys of the input device, scanning of bar codes or voice input received from a microphone”, column 8, lines 56 - 60);

recording an entry record indicative of the input received at the POS station during the transaction (“a record of the transaction database defines a transaction performed at a POS terminal. The transaction database typically includes a plurality of records such as the record each defining a different transaction”, page 6, lines 53 - 57), wherein recording is inherent in the creation and existence of a record;

associating the retail performance metric record with the entry record (“the table 300 also defines fields for each of the entries 302, 304, 306 and 308, which specify (i) an operator identifier 320 for uniquely identifying the operator; (ii) a name 322 of the operator; (iii) an authorization level 324 of the operator; (iv) a number of transactions 326 in which the operator participated; (v) a number of transactions in which a verbal message was spoken properly by the operator 328; (vi) a percentage of times the verbal message was spoken properly 330, which may be determined from the quotient of the number of transactions in which a verbal message was spoken properly by the operator 328 and the number of transactions 326; (vii) a verbal message complexity level 332 that indicates the maximum complexity of the verbal message that the operator is able or allowed to speak; (viii) a voice file 334 that indicates characteristics of the operator's voice and speech patterns; and (ix) a weekly bonus earned 336 by the operator”, column 5, lines 40 - 67), where the operator identifier is a entry record and the percentage of times a verbal message was spoken correctly is a performance metric;

repeating the steps of receiving, recording the entry record, recording the retail performance metric record, and associating for a plurality of events during the transaction ("A first transaction is initiated (step 902) and a prompt to be spoken is transmitted (step 904). An audio signal is received (step 906) and compared with the prompt to determine whether the audio signal corresponds to the prompt (step 908). If the audio signal does not correspond to the prompt, the prompt is again transmitted (step 904). If the audio signal does correspond to the prompt, then a second transaction may be initiated (step 910", column 9, line 65 – column 10, line 5), wherein initiating a second transaction is repeating the steps performed in a first transaction.

Walker teaches recording a retail performance metric record, the retail performance metric record being a function of the retail performance metric type, ("Number of transactions in which message spoken properly", figure 3"). Walker also teaches a fixed, determined, period of time, ("the number of transactions in which a verbal message was spoken properly during a predetermined period of time", column 6, lines 26 - 28) and also teaches a variable period of time waiting for the occurrence of an event, ("the audio signal may also represent sound received during a period of time that ends upon occurrence of a predetermined event", column 9, lines 9 - 11). However, Walker does not teach using this elapsed wait spend waiting for the event of receiving input to occur as a performance metric.

Walker's use of a predetermined period of time and a predetermined event to end and define a period of time ending when an event occurs is so very similar to the applicant's use wait time as a performance metric, that measuring the time for use as a performance metric does not present a new or novel functionality. Official Notice is taken that it is old and well-known in the

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art to compute a performance metric consisting of measuring the waiting time it would take for an event to occur. Walker must be able to measure the predetermined time period in which message are spoken properly, otherwise it would not be possible for the Walker invention to perform the calculation of determining the number of transactions that occurred in a predetermined time period. Walker also teaches the ability to measure the end of a period of time when a specific event occurs, thereby defining a period of time that can be measured. Measuring a time period, such as a wait time, is a well-known metric for evaluating the performance of a retail POS clerk, where generally people perceive that the longer the wait time, the worse the clerk is performing. Long wait times deter customers from entering lines and thereby making purchases, so any indicator of wait time may be used to analyze and shorten wait times, thereby improving customer service. Therefore it would be very obvious to any one of ordinary skill in the art of time and performance measurement to measure the time it takes for an event or transaction to occur because this metric could be used to indicate a problem that needs to be resolved and that could eventually be used to improve business performance.

As per claims 2 and 8, Walker teaches combining the retail performance metric record with the entry record, ("a prompt to be spoke is transmitted. An audio signal is received and compared with the prompt to determine whether the audio signal corresponds to the prompt", column 9, line 65 – column 10, line 2), wherein the entry record is the prompt and the comparison is a performance metric.

As per claims 3 and 9, Walker teaches where the entry record includes a unique entry identifier value and the associating step comprises including the unique entry identifier field value of the entry record with the retail performance metric record ("Operator Identifier",

“Number of Transactions in which message spoken properly” and “% of times message spoken properly figure 3), wherein the operator identifier is a unique entry identifier and the “number of transactions in which message spoken properly” and “% of times message spoken properly” are retail performance metrics.

As per claims 6 and 12, Walker et al teaches the method and system wherein the entry record after addition of the retail performance metric record comprises an entry identifier field (“Transaction # 12345678”, figure 16), an entry type field (“Item Description”, figure 16), a time of entry field (“Time 2:09”, figure 16) and an elapsed time field, (“the audio signal may also represent sound received during a period of time that ends upon occurrence of a predetermined event”, column 9, lines 9 - 11).

As per claims 7, 16 and 20, Walker et al teaches a computer implemented system for associating a retail performance metric record with an entry causing the retail performance metric, the retail performance metric record being a function of the retail performance metric type and the time elapsed waiting for and receiving the input, comprising:

- a processor for receiving and transmitting data (figure 2, item 202, “Processor”);

- a memory coupled to the processor (“The processor 202 is in communication with a data storage device 204, such as an appropriate combination of Emagnetic, optical and/or semiconductor memory”, column 3, lines 45 - 48),

- the memory having stored therein sequences of instructions which when executed by the processor, cause the processor to receive an input indicative of an event occurring at a point of sale station during a transaction, record an entry record indicative of the input received at the POS station during the transaction, record an entry record indicative of the input received at the

POS station during the transaction, wherein the event occurring at the POS station is a scan operation, (“the processor 202 is also in communication with an input device 206, a printer 208 and a display device 210. The input device 206 preferably comprises a keypad for transmitting input signals, such as signals indicative of a purchase, to the processor 202. The input device 206 may comprise a card reader for reading magnetically-encoded information on cards passed there through, such as credit cards, frequent shopper cards and identity cards. The input device 206 may comprise an optical scanner for reading bar codes, such as bar codes registered on items of inventory”, column 3, lines 57 - 66).

Walker teaches recording a retail performance metric record, the retail performance metric record being a function of the retail performance metric type, (“Number of transactions in which message spoken properly”, figure 3”). Walker also teaches a fixed, determined, period of time, (“the number of transactions in which a verbal message was spoken properly during a predetermined period of time”, column 6, lines 26 - 28) and also teaches a variable period of time waiting for the occurrence of an event, (“the audio signal may also represent sound received during a period of time that ends upon occurrence of a predetermined event”, column 9, lines 9 - 11). However, Walker does not teach using this elapsed wait spend waiting for the event of receiving input to occur as a performance metric.

Walker’s use of a predetermined period of time and a predetermined event to end and define a period of time ending when an event occurs is so very similar to the applicant’s use wait time as a performance metric, that measuring the time for use as a performance metric does not present a new or novel functionality. Official Notice is taken that it is old and well-known in the art to compute a performance metric consisting of measuring the waiting time it would take for



an event to occur. Walker must be able to measure the predetermined time period in which message are spoken properly, otherwise it would not be possible for the Walker invention to perform the calculation of determining the number of transactions that occurred in a predetermined time period. Walker also teaches the ability to measure the end of a period of time when a specific event occurs, thereby defining a period of time that can be measured. Measuring a time period, such as a wait time, is a well-known metric for evaluating the performance of a retail POS clerk, where generally people perceive that the longer the wait time, the worse the clerk is performing. Long wait times deter customers from entering lines and thereby making purchases, so any indicator of wait time may be used to analyze and shorten wait times, thereby improving customer service. Therefore it would be very obvious to any one of ordinary skill in the art of time and performance measurement to measure the time it takes for an event or transaction to occur because this metric could be used to indicate a problem that needs to be resolved and that could eventually be used to improve business performance.

6. Claims 4, 5, 10, 11, 14, 15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US 6,567,787) in view of Green (WO 97/13229).

As per claims 4, 5, 10, 11, 14, 15, 17 and 18, Walker et al teaches a system that uses a database to store records on employee performance metrics and on transactions, ("the storage device also stores an operator database, an inventory database, a transaction database, a prompt database", column 5, lines 24 - 27). Walker does not specifically teach adding a pointer or link to the retail performance metric record.

Green teaches linking an employee performance metric to a database (figure 1, lines 16, 18, 20 and 22) through use of a graphical user interface ("Figure 3 is a showing of a video screen

presentation”, page 3). The performance metric data is also linked via the graphical user interface in this manner, (“the color assignments would be cross-correlated with the clerks’ identification in a digital storage lookup table, as would the respective clerks’ performance information. The evaluator then interacts with the conformed display on a color basis, i.e., to inspect performance of ten year employees, the evaluator simply selects red display areas from the conformed display”, page 2), wherein cross-correlated is a form of a link used in a database to access data in order to present data in a user interface.

Both inventions are analogous art because both are devices for measuring the performance of POS clerks using scanning, keying, or tendering transaction data.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the links and pointers in the Green POS evaluation graphical user interface device with the Walker POS evaluation device in order to present the user with an easy to access the performance data. This would enable the POS clerks who are not experts in information technology applications to easily use the interface in order to determine how they are performing with respect to their peers and with respect to expectations set by management.

#### ***Response to Amendments***

7. Applicant's arguments with respect to claim 1 - 20 have been considered but are moot in view of the new ground(s) of rejection.

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***Conclusion***

8. No claims were allowed and all claims were rejected.
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Williams et al (US 5,410,108) – Scanner and scale  
Ferguson et al. (US 5,256,863) – In store POS system  
Moderi et al (US 5,510,979) – Retail data processing system  
Brauneis (US 5,139,100) – Point of sale scanner  
Green (WO 97/13229) – POS station clerk performance evaluator

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric Shaffer whose telephone number is (703) 305-5283. The Examiner can normally be reached on Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:


Commissioner of Patents and Trademarks  
Washington D.C. 20231

Or faxed to:

(703) 746-7238	[After Final communications, labeled "Box AF"]
(703) 746-7239	[Official communications]
(703) 706-9124	[Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

ETS  
October 21, 2004

  
**SUSANNA M. DIAZ**  
**PRIMARY EXAMINER**  
AU. 3623